

IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY

LARRY R. HEDLUND,)	CASE NO.
)	
Plaintiff,)	PETITION FOR TEMPORARY
v.)	AND PERMANENT INJUNCTIVE
)	RELIEF AND REQUEST FOR
RECORDS CUSTODIAN,)	IMMEDIATE HEARING
IOWA DEPARTMENT OF PUBLIC SAFETY,)	
)	
Defendants.)	

COME NOW the Plaintiff, Larry R. Hedlund ("Hedlund"), by counsel, pursuant to Iowa Code Section 22.10 and states the following:

INTRODUCTION

1. At all times material hereto, Hedlund was a resident of Fort Dodge, Webster County, Iowa. Hedlund is an "aggrieved person" within the meaning of Iowa Code § 22.10(1).
2. At all times material hereto, the Iowa Department of Public Safety ("Iowa DPS") was a government body and the lawful custodian of the records at issue in this case. The principal place of business for Iowa DPS is Polk County, Iowa.

BACKGROUND FACTS

3. Hedlund was employed by the Iowa DPS in the Department of Criminal Investigations from July 1, 1988 to July 17, 2013. At the time of his termination, Hedlund was a Special Agent in Charge ("SAC").
4. On May 1, 2013 SAC Hedlund was placed on paid administrative leave pending an investigation by the Professional Standards Bureau; an arm of the Iowa DPS.
5. After Hedlund was placed on leave, the Professional Standards Bureau conducted an investigation regarding alleged work rule violations by SAC Hedlund.

6. The investigation resulted in a 500-page “Confidential Personnel Investigation” which became the basis for SAC Hedlund’s termination on July 17, 2013. The “Confidential Personnel Investigation” generally consists of witness statements, emails as well as text and phone records.

7. The cover pages of the investigative report refers to it as a “Confidential Case File” and a “Confidential Personnel Investigation.” The following admonition is found on the second (cover) page: “This is an Administrative Personnel Investigation report. It contains references to persons and facts not publically known. The welfare and safety of these witness, the Department of Public Safety Employees and the integrity of this investigation may be compromised by disclosure of this material. This investigative report is protected under Iowa Statute or case law and the Iowa Administrative Rules. Improper dissemination or attempt to obtain such materials may subject an individual to civil or criminal sanctions.” (Exhibit “A”)

8. On July 18, 2013 Governor Terry E. Branstad held a press conference where he likewise acknowledged that the Confidential Personnel Investigation could not be disclosed to the public and refused to answer questions relating to the content of the report stating: “I would love to tell you everything but the lawyers tell me I can’t.”

9. On July 25, 2013 Governor Branstad wrote a letter to Louis A. Lavorato (“Lavorato”); the former Chief Justice of the Iowa Supreme Court. In the letter, Governor Branstad makes the following statement: “Iowa law prevents all Iowans from having all the facts and events surrounding Mr. Hedlund’s termination; therefore, I ask you to fully review the Internal Affairs investigation and provide the public with your own independent conclusion as to whether Mr. Hedlund’s termination was in any way related to retaliation for reporting my vehicle for speeding on April 26, 2013. I have asked the Department of Public Safety, and all state employees, fully cooperate with you. I ask that they provide you all documents you request.” (Exhibit “B”)

10. On information and belief, Lavorato currently has a copy of Hedlund's Confidential Personnel Investigation in his possession and control.

VIOLATION OF IOWA CODE CHAPTER 22

11. Iowa Code §22.7(11)(a) provides in pertinent part: "The following records shall be kept confidential, unless otherwise ordered by a court, by the lawful custodian of the records, or by any person duly authorized to release such information: Personal information in confidential personnel records of government bodies relating to identified or identifiable individuals who are officials, officers or employees of the government bodies."

12. Iowa DPS, the custodian of record, acknowledged that the Confidential Personnel Investigation regarding SAC Hedlund is "protected on or under Iowa Statute or case law and Iowa Administrative Rules." (Exhibit "A")

13. On information and belief, Governor Branstad ordered the Iowa DPS to disclose the Confidential Personnel Investigation regarding SAC Hedlund to Louis Lavorato; a member of the general public who is not an employee or agent of the State of Iowa.

14. The Iowa Court of Appeals in State v. Garrison, 2006 WL 138280(Iowa Ct. App. 2006)(unpublished) held that an investigative file regarding the suspension of a DCI agent was exempt from disclosure: "The documents generated through the investigation of Agent Berrier's conduct and his resulting suspension constitute such "[p]ersonal information in confidential personnel records." Id. at * 19. See e.g., American Civil Liberties Union Foundation of Iowa, Inc. v. Records Custodian, Atlantic Community School District, 818 N.W.2d 231, 236 (Iowa 2012)(employee disciplinary information exempt from disclosure under §22.7(11)); Clymer v. City of Cedar Rapids, 601 N.W.2d 42, 48 (Iowa 1999)(sick leave records of public employees can be disclosed "so long as the information disclosed does not reveal. . . professional evaluations. . . "); Des Moines Independent Community School District v. Des Moines Register

& Tribune Company, 487 N.W.2d 666, 670 (Iowa 1992)(in-house job performance documents exempt from disclosure).

15. The conduct of the Iowa DPS in disclosing SAC Hedlund's Confidential Personnel Investigation to Lavorato violates Iowa Code § 22.7(11).

16. A petition seeking similar injunctive relief was not presented to and refused by any other court or justice.

17. Plaintiff submits that a bond is not required as per Iowa Rule of Civil Procedure 1.1508 in that no monetary or other liability will inure to the custodian of record for DPS as a result of the court granting the request for injunctive relief.

WHEREFORE, Plaintiff Larry Hedlund requests the following relief:

(a) that an injunction punishable by civil contempt be issued against the lawful custodian and other appropriate persons within the Iowa DPS ordering them to comply with the requirements of Chapter 22 in this case including ordering them to request that Lavorato return the Confidential Personnel Investigation;

(b) that an injunction punishable by civil contempt be issued against the Iowa DPS and other appropriate persons ordering them to refrain from any future violations of Chapter 22 for a period of one year;

(c) that as a result of the knowing violation of the statute that the custodian of record and other appropriate persons be ordered to pay \$2,500.00 in damages;

(d) that an order be issued requiring the custodian of record or other appropriate person to pay costs and reasonable attorney fees for establishing a violation of Chapter 22.


THOMAS J. DUFF (AT #0002229)

DUFF LAW FIRM, P.L.C.

The Griffin Building

319 7th Street, Suite 600

Des Moines, Iowa 50309

Telephone: 515-281-1111

Facsimile: 515-282-0477

Email: tom@tdufflaw.com

ELIZABETH FLANSBURG (AT0002614)

LAWYER, DOUGHERTY, PALMER &

FLANSBURG, PLC

4090 Westown Parkway, Suite E

West Des Moines, IA 50266

Telephone: 515/223-8860

bethflansburg@me.com

ATTORNEYS FOR PLAINTIFF

Original filed.

Copies to:

Jeff Peterzalek

Assistant Attorney General

Hoover State Office Building

Des Moines, IA 50319

515-281-4213

Fax 515 281-7551

Louis A. Lavorato

809 Valley West Drive

West Des Moines, Iowa 50265

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on Aug. 8, 20 13

By: ☒ U.S. Mail ☐ FAX
☐ Hand Delivered ☐ Overnight Courier
☐ Certified Mail ☒ Other: Email

Signature Wendy J. Hart

State of Iowa
DEPARTMENT OF PUBLIC SAFETY
PROFESSIONAL STANDARDS BUREAU

CONFIDENTIAL CASE FILE



- | | |
|---|---|
| <input checked="" type="checkbox"/> ORIGINAL | <input type="checkbox"/> FIELD INVESTIGATION |
| <input type="checkbox"/> DIVISION COPY | <input type="checkbox"/> COMMISSIONER'S OFFICE COPY |
| <input type="checkbox"/> OTHER COPY TO: _____ | |

CASE FILE NUMBER: 2013-034

Please Return To The
Professional Standards Bureau
When The Case Is Complete



IOWA DEPARTMENT OF PUBLIC SAFETY
PROFESSIONAL STANDARDS BUREAU



CONFIDENTIAL PERSONNEL INVESTIGATION

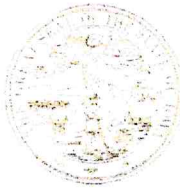
In accordance with Department of Public Safety Procedure, Rule 29-01.01, Personnel Investigations. All Professional Standards Bureau case files are to be returned to the Professional Standards Bureau. Only the Professional Standards Bureau shall maintain permanent records of the investigations.

This is an Administrative Personnel Investigation report. It contains references to persons and facts not publicly known. The welfare and safety of these witnesses, Department of Public Safety Employees and the integrity of this investigation may be compromised by disclosure of this material. This investigative report is protected under Iowa Statute or case law and Iowa Administrative Rules. Improper dissemination or attempts to obtain such material may subject an individual to civil or criminal sanctions.

Chapter 22.7 – Code of Iowa

Chapter 622.11 – Code of Iowa

661 Chapter 35 – Iowa Administrative Code



TERRY E. BRANSTAD
GOVERNOR

OFFICE OF THE GOVERNOR

KIM REYNOLDS
LT. GOVERNOR

July 25, 2013

The Honorable Louis A. Lavorato
Former Chief Justice of the Iowa Supreme Court
809 Valley West Drive
West Des Moines, Iowa 50265

Dear Chief Justice Lavorato,

You are known within the legal community for your integrity, legal acumen and impartial judgment. I believe the people of Iowa would benefit from your independent review of a matter of public interest.

On the afternoon of April 26, 2013, Larry Hedlund, a supervisor with the Division of Criminal Investigation (DCI), reported a speeding vehicle on Highway 20. A State Trooper located the vehicle and determined it was travelling at 84 mph in a 65 mph zone. I was a passenger in the vehicle. An unrelated complaint was filed against Mr. Hedlund prior to the afternoon of April 26th. The Professional Standards Bureau (Internal Affairs) investigated the complaint against Mr. Hedlund. On July 17, 2013, the Internal Affairs investigation concluded and the Department of Public Safety terminated Mr. Hedlund.

I believe unfounded accusations of retaliation have been made against me. All of the requested information that can be released pursuant to our Open Records law has been released to the public. Iowa law prohibits me from providing the public full access to all of information related to the complaint filed against Mr. Hedlund, including the investigative file. This complaint led to his eventual termination by the department.

I am committed to transparency. Iowa law prevents all Iowans from having all of the facts and evidence surrounding Mr. Hedlund's termination; therefore, I ask you to fully review the Internal Affairs investigation and provide the public with your own independent conclusion as to whether Mr. Hedlund's termination was in any way related to retaliation for reporting my vehicle for speeding on April 26, 2013. I have asked that the Department of Public Safety, and all state employees, fully cooperate with you. I ask that they provide you all documents you request. It is my understanding that the Attorney General's office has prepared a Non-Disclosure Agreement to ensure compliance with all laws regarding confidentiality and that you are bound by the same confidentiality obligation as the State. You have full discretion to interview anyone you choose to interview on a voluntary basis. It is important to me that you have complete autonomy and full authority over your independent review and how you choose to conduct it. Your independent conclusion will be made available to the public.

Sincerely,

Terry E. Branstad
Governor

